

**ORIGINAL****FILED**

07 DEC 21 PM 3:25

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

2008

RY DEPUTY

1 VITALIY KAGANOVICH<sup>1</sup>  
 2 A71-243-964  
 3 San Diego Detention Center (CCA)  
 P.O. Box 439049  
 San Ysidro, CA 92143-9049

6 UNITED STATES DISTRICT COURT  
 7 SOUTHERN DISTRICT OF CALIFORNIA

8 VITALIY KAGANOVICH, ) Civil Action No. '07 CV 2403 JAH AJB  
 9 [A71-243-964], )  
 10 Petitioner, ) PETITION  
 11 v. ) FOR  
 12 MICHAEL CHERTOFF, SECRETARY OF ) WRIT OF HABEAS CORPUS  
 13 THE DEPARTMENT OF HOMELAND )  
 14 SECURITY, MICHAEL MUKASEY, )  
 15 ATTORNEY GENERAL, ROBIN F. BAKER, )  
 16 DIRECTOR OF SAN DIEGO FIELD OFFICE, )  
 17 U.S. IMMIGRATION AND CUSTOMS )  
 18 ENFORCEMENT, JOHN A. GARZON, )  
 OFFICER-IN-CHARGE, )  
 19 Respondents. )  
 20

## I.

INTRODUCTION

21 The petitioner, Vitaliy Kaganovich, respectfully petitions this Court for a writ of habeas corpus  
 22 to remedy his unlawful detention.

23  
 24 The petitioner is filing this petition for a writ of habeas corpus with the assistance of Janet Tung and  
 25 the Federal Defenders of San Diego, Inc., who drafted the instant petition. That same counsel also assisted  
 26 the petitioner in preparing and submitting his request for the appointment of counsel. Robin F. Baker is the  
 27 director of the San Diego field office of U.S. Immigration and Customs Enforcement. He administers  
 28 federal immigration laws on behalf of the Secretary of Homeland Security in the federal judicial district for  
 the Southern District of California. In Mr. Baker's capacity as the director of the local office of U.S.  
 Immigration and Customs Enforcement, he has immediate control and custody over the petitioner. John A.  
 Garzon is the officer in charge of the detention facility holding the petitioner.

1 Petitioner is in the custody of the Secretary of the Department of Homeland Security and the  
 2 Attorney General of the United States and their employees (hereinafter "respondents"). He is detained at  
 3 the respondents' detention facility in San Diego, California, under the control of the officer in charge.

4 **II.**

5 **JURISDICTION AND VENUE**

6 This Court has jurisdiction under 28 U.S.C. §§ 1331, 2241(c)(1) and (3), and U.S. Const. art.  
 7 I, § 9, cl. 2, because the petitioner is being unlawfully detained as a result of U.S. Immigration and Customs  
 8 Enforcement's misapplication of the provisions of 8 U.S.C. § 1231(a)(6). See Zadvydas v. Davis, 533 U.S.  
 9 678, 686-90 (2001). Moreover, his detention violates the Constitution, the laws, and the treaties of the  
 10 United States. See Magana-Pizano v. INS, 200 F.3d 603, 610 (9th Cir. 2000); Goncalves v. Reno, 144 F.3d  
 11 110, 123 (1st Cir. 1998). Reno v. American-Arab Anti-Discrimination Committee, 525 U.S. 471, 482-83  
 12 (1999), makes clear that the petitioner's habeas petition is not barred by 8 U.S.C. § 1252(g).

13 Venue is proper in this district because the petitioner is detained here. See 28 U.S.C. § 2241,  
 14 et. seq., and 28 U.S.C. § 1391(e).

15 **III.**

16 **BACKGROUND**

17 Petitioner, a native of the Ukraine born in the former Soviet Union, entered the custody of  
 18 Respondents over six months ago, on February 8, 2007, where he has remained since. He was ordered  
 19 removed from the United States by an Immigration Judge on July 30, 2002; the Board of Immigration  
 20 Appeals (BIA) affirmed the decision on January 15, 2004; and the Ninth Circuit denied his petition for  
 21 review on December 12, 2006 and issued mandate on February 5, 2007, transferring jurisdiction back to the  
 22 Respondents, over ten months ago. Petitioner cannot be removed to his country of origin or to an alternate  
 23 country. He is being held in detention by Respondents based upon their misapplication of 8 U.S.C.  
 24 § 1231(a)(6) to indefinitely detain non-removable aliens.

25 The petitioner was born in 1970 in Zhitomir, in what was then the U.S.S.R., which later  
 26 became a part of the Ukraine. In 1994, he fled to the United States as a refugee. He subsequently became  
 27 a legal permanent resident in 1995. Petitioner was ordered removed to the Ukraine by an immigration judge  
 28 on July 30, 2002. Petitioner's order of removal became administratively final as of January 15, 2004, after

1 the BIA dismissed his appeal. See 8 C.F.R. § 1241.1; see also 8 C.F.R. § 1240.15 (appeals to the BIA must  
2 be filed within 30 calendar days of the immigration judge's oral decision.). The Ninth Circuit's issuance  
3 of mandate on February 5, 2007, after it denied Petitioner's appeal on December 12, 2006, terminated the  
4 stay of removal that had been in effect during the pendency of his appeal. Petitioner's removal period  
5 commenced at least as of February 5, 2007. See 8 U.S.C. § 1231(a)(1)(B)(ii) ("The removal period begins  
6 on the latest of the following: . . . If the removal order is judicially reviewed and if a court orders a stay of  
7 the removal of the alien, the date of the court's final order.").

8 On February 8, 2007, three days after the Ninth Circuit issued the mandate in his case,  
9 Petitioner was taken into the custody of immigration officials. While in custody, Mr. Kaganovich filed a  
10 motion to reopen the removal proceedings. At that time, the stay of removal he had previously obtained  
11 from the Ninth Circuit was no longer in effect, and Mr. Kaganovich did not seek an administrative stay of  
12 removal. Mr. Kaganovich's motion to reopen, which was denied on July 20, 2007, had no effect on the time  
13 period for removal. 8 C.F.R. § 241.4(b)(1) ("An alien who has filed a motion to reopen immigration  
14 proceedings for consideration of relief from removal . . . shall remain subject to the provisions of this section  
15 [requiring a custody determination after 90 days, and HQPDU review after 180 days] unless the motion to  
16 reopen is granted."). Mr. Kaganovich has been under a final order of removal since February 5, 2007, with  
17 no stay of removal in place for the past ten months.

18 By the same token, the motion to reopen had no legal effect on the timing of Petitioner's 90-  
19 day custody review. See 8 C.F.R. §§ 241.4(b)(1) & (c). However, instead of conducting a custody review  
20 on May 9, 2007, 90 days after February 8, the U.S. Immigration and Customs Enforcement (ICE) waited  
21 until October 29, 2007, to conduct a custody review. It issued an order to continue detention on that date.  
22 See Appendix A, attached hereto. The order recommended detention on the sole grounds that "ICE . . . is  
23 in position to effect your removal pending the issuance of a travel document. Continued requests are being  
24 made to the Consulate of the Ukraine, as well as to ICE Headquarters in an effort to obtain a travel  
25 document." Id. The order made no indication of any response or progress made in ICE's efforts to obtain  
26 a travel document from the Ukrainian consulate, or any prediction of the time expected for a response. See  
27 id. Neither is there any explanation of what additional internal barriers to obtaining travel documents that  
28 Respondents face from "ICE Headquarters," or what measures, if any, were taken to overcome such barriers.

The order further stated that if Petitioner was not “released or removed from the United States by January 16, 2008, jurisdiction of the custody decision in your case will be transferred to the Headquarters Post Order Unit (HQPDU), 801 I St. NW, Washington, DC 20536. HQPDU will make a final determination regarding your custody.” Id. To date, Petitioner has received no further communication regarding his custody status, and does not know whether HQPDU has made a determination of his status.

Over ten months have elapsed since Petitioner was under a final order of removal and subject to removal. At no time during these past ten months, or in the nearly four years since Petitioner's removal order was administratively final has the United States government received travel documents that would permit his repatriation to the Ukraine. See 8 U.S.C. § 1231(b)(2)(A), (D), (E)(iv)-(vi) (deportable alien must be removed first to country designated by him at deportation hearing, then to country of citizenship, then to listed countries, including the country of birth or that country having sovereignty over it at time of the alien's birth or at time of the deportation.). As the Ukrainian government has not issued travel documents in the ten months since Petitioner has been subject to a final order of removal, it is extremely unlikely that its government will issue travel documents to permit his removal there in the reasonably foreseeable future. Neither have Respondents obtained travel documents that would permit his removal to any other country. Thus, the United States has had ample opportunities to obtain travel documents, yet has failed to do so. There is therefore no indication that the petitioner can removed to the Ukraine, or any other country, in the reasonably foreseeable future.

IV.

## **ARGUMENT**

**THIS COURT MUST RELEASE THE PETITIONER FROM THE CUSTODY OF THE  
RESPONDENTS UNDER APPROPRIATE CONDITIONS OF SUPERVISION.**

Federal law requires the Attorney General to remove a deportable alien from the United States within a ninety-day period after an immigration judge's order of removal becomes administratively final. See 8 U.S.C. § 1231(a)(1); see also *Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2002). During the ninety-day removal period, the alien must be detained in custody. See 8 U.S.C. § 1231(a)(2).

If the Attorney General cannot remove the alien within the statutory removal period, the Attorney General can release the person in question under appropriate conditions of supervision, including

1 regular appearances before an immigration officer, travel restrictions, and medical or psychiatric  
 2 examinations, among other requirements. See Ma, 257 F.3d at 1104; see also 8 U.S.C. § 1231(a)(3) (listing  
 3 the conditions of supervision for deportable or removable aliens released from immigration custody at the  
 4 expiration of the ninety-day removal period). The Attorney General may detain a deportable or inadmissible  
 5 alien beyond the ninety-day removal period, however, when he determines that the person in question would  
 6 “be a risk to the community or unlikely to comply with the order of removal” if released from immigration  
 7 custody. 8 U.S.C. § 1231(a)(6).

8 In Zadvydas v. Davis, 533 U.S. 678, 689 (2001), the Supreme Court held that 8 U.S.C.  
 9 § 1231(a)(6) only authorizes a period of detention that is reasonably necessary to bring about an alien’s  
 10 removal from the United States, and “does not permit indefinite detention.” If a deportable alien has not  
 11 been released from immigration custody within a six-month period after the issuance of a final order of  
 12 removal or deportation, “the habeas court must ask whether the detention in question exceeds a period  
 13 reasonably necessary to secure removal.” Id. at 699; see also Ma, 257 F.3d at 1102 n.5 (declaring that in  
 14 Zadvydas, “the Supreme Court read the statute to permit a ‘presumptively reasonable’ detention period of  
 15 *six months* after a final order of removal—that is, *three months* after the statutory removal period has ended  
 16 . . . .”) (emphasis in original). When a deportable alien “provides good reason to believe that there is no  
 17 significant likelihood of removal in the reasonably foreseeable future, the Government must respond with  
 18 evidence sufficient to rebut that showing.” Zadvydas, 533 U.S. at 701. Federal officials **must** release a  
 19 deportable alien from custody under appropriate conditions of supervision when no “significant likelihood  
 20 of removal [exists] in the reasonably foreseeable future.” Id.; see also Ma, 257 F.3d at 1100 (concluding  
 21 that federal law does not permit the Attorney General to hold someone “for more than a reasonable period”  
 22 beyond the ninety-day statutory removal window, and mandates release of the alien under 8 U.S.C.  
 23 § 1231(a)(3), when the alien “has already entered the United States and there is no reasonable likelihood that  
 24 a foreign government will accept the alien’s return in the reasonably foreseeable future . . . .”).

25 The petitioner has been detained in the custody of respondents since **February 8, 2007**, and  
 26 has spent, in total, over ten months in immigration custody. In the ten months’ time since the order of  
 27 removal became completely final on February 5, 2007, the United States government has not received travel  
 28 documents that would permit the petitioner’s repatriation to the Ukraine. There is no indication that the

1 petitioner can be removed to that country in the reasonably foreseeable future. The ninety day statutory  
 2 removal period under 8 U.S.C. § 1231 ended on **May 9, 2007**, over six months ago. Moreover, there is no  
 3 legitimate reason to keep Petitioner in custody. Petitioner was not in custody during the four and a half years  
 4 after he was ordered removed by an immigration judge, and he duly submitted to Respondents' authority  
 5 after all of his appeals were denied. In addition to violating Zadvydas, Petitioner's continued detention is  
 6 likely based on an error of law regarding the effect of his motion to reopen administrative proceedings.

7 The Zadvydas court erected a "presumptively reasonable" six-month detention period during  
 8 which the federal government should attempt to accomplish all reasonably foreseeable removals pursuant  
 9 to 8 U.S.C. § 1231. Zadvydas, 533 U.S. at 701; see also Ma, 257 F.3d at 1102 n.5. The six-month period  
 10 expired long ago on **August 7, 2007**. Petitioner's detention beyond the presumptively reasonable detention  
 11 period announced in Zadvydas violates §1231(a)(6), because it is not significantly likely that the petitioner  
 12 can be removed to the Ukraine in the reasonably foreseeable future. See Zadvydas, 533 U.S. at 700; see also  
 13 Ma, 257 F.3d at 1112 (holding that section 1231 mandates the release of deportable aliens "at the end of the  
 14 presumptively reasonable detention period" when "there is no repatriation agreement and no demonstration  
 15 of a reasonable likelihood that one will be entered into in the near future . . ."). Therefore, the petitioner  
 16 **must** be released under the conditions set out in §1231(a)(3). See Zadvydas, 533 U.S. at 700-01.

17 **V.**

18 **REQUESTED RELIEF**

19 The petitioner requests that this Court order the respondents to release him from custody under  
 20 the conditions of supervision set forth in 8 U.S.C. §1231(a)(3).

21 **VI.**

22 **VERIFICATION**

23 I, Vitaliy Kaganovich, hereby verify that the facts contained in the instant petition are true and  
 24 correct.

25 Respectfully submitted,

26 Dated: 12-14-07

27   
 28 VITALIY KAGANOVICH  
 Petitioner

# APPENDIX A

Office of Detention and Removal Operations  
San Diego Field Office

U.S. Department of Homeland Security  
880 Front Street  
San Diego, California 92101



**U.S. Immigration  
and Customs  
Enforcement**

KAGANOVICH, Vitaliy Semenovich  
C/O Corrections Corporation of America  
Otay Detention Facility  
446 Alta Road, Suite #5400  
San Diego, California 92158

A71 243 964

**Decision to Continue Detention**

This letter is to inform you that your custody status has been reviewed and it has been determined that you will not be released from the custody of U.S. Immigration and Customs Enforcement (ICE) at this time. This decision has been made based on a review of your file and/or your personal interview and consideration of any information you submitted to ICE's reviewing officials.

An Immigration Judge ordered you removed from the United States to the Ukraine, and the Board of Immigration Appeals subsequently upheld that decision. ICE has documents indicating that you are a citizen and national of the Ukraine, and is in position to effect your removal pending the issuance of a travel document. Continued requests are being made to the Consulate of the Ukraine, as well as to ICE Headquarters in an effort to obtain a travel document.

Based on the likelihood of ICE effecting your removal from the United States, you are to remain in ICE custody pending your removal from the United States. You are advised that you must demonstrate that you are making reasonable efforts to comply with the order of removal, and that you are cooperating with ICE's efforts to remove you by taking whatever actions ICE requests to effect your removal. You are also advised that any willful failure or refusal on your part to make timely application in good faith for travel or other documents necessary for your departure, or any conspiracy or actions to prevent your removal or obstruct the issuance of a travel document, may subject you to criminal prosecution under 8 USC Section 1253(a).

If you have not been released or removed from the United States by January 16, 2008, jurisdiction of the custody decision in your case will be transferred to the Headquarters Post Order Unit (HQPDU), 801 I St. NW, Washington, DC 20536. HQPDU will make a final determination regarding your custody.

*W. H. Lee*  
Signature and Title of Deciding Official

*12/29/07*  
Date

ORIGINAL

## UNITED STATES DISTRICT COURT

## SOUTHERN DISTRICT OF CALIFORNIA

FILED

07 DEC 21 PM 3:25

VITALIY KAGANOVICH,  
[A71-243-964]) Case No. TBA  
CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

07 OV 2403 JAH AJB

1/18 DEPUTY

Plaintiff,

BY:

vs.

PROOF OF SERVICE

MICHAEL CHERTOFF, et al.,

)

Defendant.

)

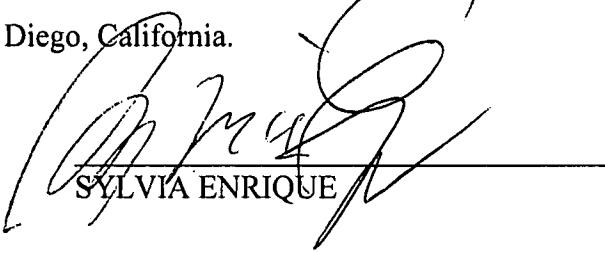
I, the undersigned, say:

- 1) That I am over eighteen years of age, a resident of the County of San Diego, State of California, and not a party in the within action;
- 2) That my business address is 225 Broadway, Suite 900, San Diego, California, 92101;
- 3) That I caused to be delivered the within **CIVIL COVER SHEET, PETITION FOR WRIT OF HABEAS CORPUS, NOTICE OF MOTION AND MOTION FOR APPOINTMENT OF COUNSEL, AND DECLARATION OF JANET C. TUNG IN SUPPORT OF PETITIONER'S MOTIONS WITH \$5.00 POSTAL MONEY ORDER**, placing a true copy of the above-mentioned document in the United States mail on December 21, 2007, to:

KAREN P. HEWITT  
 ATTN: Civil Process Unit  
 880 Front Street  
 San Diego, CA 92101

I certify under the laws of the State of California that the foregoing is true and correct.

Executed on 21 December 2007 at San Diego, California.



SYLVIA ENRIQUE

ORIGINAL

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

VITALIY KAGANOVICH

San Diego Detention Center (CCA), P.O. Box 439049

San Ysidro, CA 92143  
(b) County of Residence of First Listed Plaintiff SAN DIEGO

(EXCEPT IN U.S. PLAINTIFF CASES)

## DEFENDANTS

07-056 07 CV 2403 JAH AJB

MICHAEL CHERNOFF, ET AL. 3.24  
CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA SAN DIEGO  
County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

## (c) Attorney's (Firm Name, Address, and Telephone Number)

PRO SE

(619) 557-5662

Attorneys (If Known)

KAREN P. HEWITT, U.S. ATTY

ATTN: CIVIL PROCESS CLERK

880 FRONT STREET, SAN DIEGO, CA 92101

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff  3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant  4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury—Product Liability	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<b>LABOR</b>	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor V vehicle	<input type="checkbox"/> 385 Property Damage	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor V vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Product Liability	<input type="checkbox"/> 861 HJA (139 SF)	<input type="checkbox"/> 875 Custom er Challenge 12 USC 3410
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<b>FORFEITURE/PENALTY</b>	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability	<b>REAL PROPERTY</b>	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIW W (405(g))	<input type="checkbox"/> 892 Economic Stabilization Act
<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 893 Environmental M atters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 740 Railway Labor Act	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights			<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property				

## V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding  2 Removed from State Court  3 Remanded from Appellate Court  4 Reinstated or  5 (specify)  6 Multidistrict Litigation  7 Magistrate Judgment

Transferred from another district

Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

28 U.S.C. § 2241

## VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:  Yes  No

## VIII. RELATED CASE(S) (See instructions):

IF ANY

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

10-12-07  
FOR OFFICE USE ONLY

RECEIPT # 145834

AMOUNT

5.00

APPLYING IFFP

JUDGE

MAG. JUDGE

12/21/07  
sp

UNITED STATES  
DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

# 145834 - SR  
\* \* C O P Y \* \*  
December 21, 2007  
15:26:28

**Habeas Corpus**  
USAO #: 07CV2403 HABEAS  
Judge.: JOHN A HOUSTON  
Amount.: \$5.00 MD  
Check#: 57867112040

**Total -> \$5.00**

FROM: KAGANOVICH V. CHERTOFF, ET AL  
HABEAS